Supreme Court, U.S.
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No. ____

In the Supreme Court of the United States

DARLA ELWOOD,

Petitioner,

v.

JOSEPH MORIN, ET AL.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether Petitioner Darla Elwood ("D. Elwood") had pled sufficient facts to establish a "meeting of the minds" of the two fathers of her children, Rodney Delaplane ("Delaplane") and Joseph Morin ("Morin"), of therapist Robert Boyle ("Boyle"),[1] and of two Los Angeles County Department of Children and Family Services ("DCFS") social workers, Ann Wellman ("Wellman") and her supervisor Barbara Dallis ("Dallis") when the Court had found that D. Elwood had satisfied the "state action requirement of Section 1983" and that D. Elwood had pled sufficient facts to hold the two fathers liable under California Penal C. Sec.11172 for making false claims of child abuse against her, which predicate acts formed a major part of the civil rights conspiracies alleged in the Fifth Cause of Action, violation of the Fourteenth Amendment's Due Process Clause (substantive and procedural), and in the Sixth Cause of Action violation of the Fourteenth's Amendment Equal Protection Clause (based on D. Elwood's gender and status as a victim of domestic violence).

2. Assuming D. Elwood had not pled sufficient facts to demonstrate a "meeting of the minds", whether the Court abused its discretion in not permitting D. Elwood to amend to delete the nongovernmental actors from the Fifth and Sixth Causes of Action, leaving only the social workers as defendants, to add a claim for violation of First Amendment

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[1] D. Elwood obtained a Rule 54(b) Judgment as to Boyle and appealed his dismissal before the conclusion of the district court proceeding. The same issues were raised in his appeal as were raised after final judgment in the subsequent appeal, No.56918 with respect to the conspiracy claim.

free speech rights, and to add a state cause of action based on California Government Code Section 820.21 (Appendix G at 31a) against the social workers and/or as a conspiracy claim against the fathers, Boyle, and the social workers.

PARTIES TO THE JUDGMENT FOR WHICH REVIEW IS SOUGHT

D. Elwood is the plaintiff and appellant below. The Defendants/Appellees below are as follows: Morin, Delaplane, Boyle, Wellman, Dallis, Los Angeles County ("County"), and Sonia Jimenez ("Jimenez"). The County and Jimenez are **not** parties to this Petition.

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Petitioner D. Elwood respectfully submits that a writ of certiorari should issue to review the Judgments of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the U. S. Court of Appeals for the Ninth Circuit in *Elwood v. Morin and Boyle*, Case No. 56077, is unreported and reprinted in Appendix C at 21a. The opinion of the U. S. Court of Appeals for the Ninth Circuit in *Elwood v. Morin and Boyle*, Case No. 56918, is unreported and reprinted in Appendix D at 8a. The District Court's Civil Minutes granting Morin's, Delaplane's, and Boyle's respective Motions to Dismiss and denying Morin's and Delaplane's in part entered May 16, 2002 are unreported and reprinted in Appendix F at 23a. The Opinion and Order of District Court for the Central District of California Granting Wellman's, Dallis', and County's Motion for Judgment on the Pleadings, Denying Entry of Default Judgment against Jimenez, and dismissing all pending state claims without prejudice entered September 16, 2002 is unreported and reprinted at Appendix E at 13a. The Orders of the Court of Appeal denying Petition for Rehearing and Suggestion for Rehearing en Banc in Case No. 56077 and Case No. 56918 are unreported and reprinted at Appendices A at 1a and B at 3a respectively.

STATEMENT OF JURISDICTION

The Orders of the Court of Appeal affirming the District Court's rulings are both dated January 2, 2004. The Orders of the Court denying Petitions for Rehearing and Suggestion for Rehearing en banc were dated and filed on February 23, 2004. This Petition is timely in that it is filed within ninety days of the orders denying Petitions for Rehearing and

Suggestion for Rehearing en Banc. Jurisdiction of this Court is invoked under 28 U.S.C. Sec.1254(1). D. Elwood first invoked federal court jurisdiction in the case under 28 U.S.C. Sec.1331 ("federal question").

CONSTITUTIONAL AMENDMENTS AND STATUTES INVOLVED

The Due Process and Equal Protection Clauses of the Fourteenth Amendment of the U. S. Constitution, California Government Code Sec.820.21 are involved. Government Code Sec.820.21 is reprinted at Appendix G at 31a.

STATEMENT OF THE CASE

I. D. ELWOOD'S FIRST AMENDED COMPLAINT.

This is a lawsuit brought under 42 U.S.C. Sec.1983 alleging that Boyle, a therapist hired and paid by Morin, one of the fathers of Elwood's children, entered into a conspiracy with the two fathers of Elwood's children (Morin and Delaplane), Jimenez, a child care worker and close friend, if not a former intimate, of Morin, and social workers Wellman and Dallis (among other social workers) to submit false reports during juvenile court proceedings to deprive D. Elwood of the permanent custody of her children.

The defendants obtained this goal by falsifying evidence and relying on testimony of child witnesses coerced or obtained by undue influence, thereby violating the rights of Elwood to due process (liberty interest in the continuing custody of her children and procedural due process violations spelled out in California Supreme Court cases and Rules of Court) and to equal protection under the Fourteenth Amendment by using her gender and status as a victim of

domestic violence against her. The deprivation of custody was the result of retaliation by the social workers against her for challenging a social worker, Barbara De Muro ("De Muro") and by the fathers because she had left Morin due to his violence and womanizing and because she had become romantically involved with the brother of Delaplane, her ex-husband.

The social workers initiated a petition in a juvenile court proceeding in June 1999 resulting in the loss of custody to D. Elwood, a young mother of five children, including Anthony Delaplane, ("Anthony"), whose date of birth is 2/21/84 (now, 20 years old); Garrett Delaplane ("Garrett") whose date of birth is 11/22/86, who passed away June 21, 1997; Tiffany ("Tiffany") Delaplane, whose date of birth is 09/20/89 (now, almost 15 years); Jordan Elwood, ("Jordan") whose date of birth is 3/24/94 (now, 10 years old); and Stephanie Elwood, ("Stephanie") whose date of birth is 9/29/95 (now, 8-1/2 years).

D. Elwood was the single parent of the five children, the two fathers showing little or no interest in their children. Both fathers were physically and emotional abusive to both D. Elwood and their children. Both had failed to pay child support as a result of which D. Elwood was forced to go on welfare. The County obtained judgments against both fathers for reimbursement to the County for the welfare payments. The County also obtained a default paternity judgment against Morin in 1996. When D. Elwood began dating another man, Delaplane and Morin swore revenge, with Morin telling people that he would use Dept of Family and Children's Services ("DCFS") to take D. Elwood's children from him so that she would come crawling back to him. Morin engaged in various acts to further carry out his plan of revenge, including attending Fathers' United meetings, hiring a

therapist to write negative reports against D. Elwood, and making a number of false complaints to DCFS about D. Elwood and her friend Amy Meinke ("Meinke"). Meinke obtained a two year civil harassment injunction against Morin because of his threats, stalking, and harassment of her and Elwood.

A false charge of molest against Anthony by Julie Delaplane, the ex-wife of James Delaplane, the man D. Elwood was dating caused DCFS to become involved. The Sheriff closed their investigation. The D. A. refused to prosecute. DCFS did not take the children, choosing to conduct an investigation headed up by De Muro. D. Elwood, at the suggestion of her father, asked De Muro if she could tape record her so that she could have clear instructions concerning Anthony. D. Elwood also commented that her then 3-1/2 year old daughter Stephanie had told D. Elwood that De Muro had patted her butt to demonstrate how innocent acts could be construed as sexual molestation. De Muro became angry with D. Elwood, left her home, and entered into two secret agreements with the fathers, transferring custody of the children to them without a court order, a warrant, or a juvenile court petition being filed. D. Elwood never regained custody, and in the five years since the children were taken from her, has never had an evidentiary hearing concerning the loss of custody.

At the time Morin brought the children to Boyle, there was a stipulated court order entered in Morin's paternity action, Morin v. Elwood, Case No. PF 00-1184, Los Angeles Superior Court ("family law order"), which prohibited either parent enrolling the children in any school or taking them to a therapist without the other parent's permission.

First, Morin violated the family law Order by enrolling the children in Longhorn Child Care Center without the knowledge or consent of Elwood. Second, Morin violated the family law Order when he brought the children to Boyle for "therapy" beginning on April 30, 1999, without the knowledge or consent of Plaintiff Elwood.

At no time did Boyle request to see the court order on custody, although he knew that Morin was involved in a bitter custody dispute to determine whether he could proceed without the mother's consent or knowledge.

At no time did Boyle ask to speak to Elwood, has never met her, and has never reviewed any of her mental health records, except at a much later time after he already had made defamatory reports about Elwood and her mental state, and then it was only to criticize a favorable MMPI.

Boyle has never performed a custody evaluation in his career, has never been appointed by a court as a custody evaluator or as a therapist for children, and was in violation of a court order when he commenced the so-called therapy of Stephanie and Jordan, which in fact were interrogations designed to obtain negative information however inaccurate against Elwood. Boyle failed to verify the truthfulness of what Morin told him or what he claimed he was hearing from the children, in particular, from Jordan. The social workers never investigated to determine whether what Morin and Boyle alleged the children told Boyle was in fact what they told him. In fact, the evidence would show that Boyle wrote the reports relying on Morin and **not the children as he claimed to have done in his reports.**

As indicated above, the Juvenile Court dismissed the charges against Anthony for insufficient evidence within five

months of taking jurisdiction. The Court also dismissed the charges against D. Elwood for child endangerment (allowing Anthony's siblings to be around him while the investigation was ongoing although his siblings were adamant that he had never touched them). The case was amended to allege that the children were emotionally harmed because of the custody dispute among the parents, which was a red herring, since Morin had two months before obtained a court order for joint physical custody of Stephanie and Jordan (in chambers without a court reporter present and without D. Elwood being present, just her attorney), and Delaplane shared joint physical custody of Tiffany since 1997. Thus, the reports generated by Morin, Delaplane, Boyle, and the social workers served no purpose other than to insure that D. Elwood never regained custody.

The social worker reports violate standards of due process for admission of statements based on the "child dependency hearsay exception"contained in all the reports, including Danowsky's, Wellman's (as approved by Dallis), and Boyle's reports as set out by the California Supreme Court in *In re Lucero* (2000) 22 Cal.4th 1227 and in *In re Cindy L.* (1997) 17 Cal.4th 15; in Welf. & Insti. Code Sec.355 (c)(1); and in Rule 1450(d)(2), CA Rules of Court providing that a hearsay statement contained in a social study that is inadmissible in a criminal or civil trial generally cannot "by itself ... support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based." The statements attributed to Jordan and sometimes Stephanie by Boyle and Wellman have no indicia of reliability, and they were never substantiated through corroboration because Wellman refused to interview Tiffany who would have established their falsity. Statements by the fathers are inadmissible hearsay and permeated the reports. Their statements were generally treated as true by Danowsky and then Wellman. Wellman continued the

practice of using inadmissible hearsay because no one in juvenile court would challenge the reports. When D. Elwood's Attorney objected to the admissibility of the reports prior to the aborted hearing D. Elwood had requested concerning change of custody, the juvenile court referee admitted them.

D. Elwood alleged seven causes of action. They are as follows: First Cause of Action ("COA"), violation of CA Civ. C. Sec.49(a), (unlawful taking or enticement of child from parent), applied to all defendants; Second COA, defamation, applied to Jimenez; Third COA , invasion of privacy, applied to Jimenez; Fourth COA, violation of CA Pen. C. Sec.11172(a), making false charges of child abuse/neglect, applied to Delaplane and Morin ("Morin"); Fifth Cause of Action, violation of 14th Amendment Due Process Clause (substantive and procedural), applied to all defendants except County ; Sixth COA, violation of 14th Amendment Equal Protection Clause (based on D. Elwood's gender and status as a victim of domestic violence), applied to all defendants except County; Seventh COA, Monell violation, applies to County. The only causes of action of concern in this Petition are the Fifth and Sixth Causes of Action against Morin, Delaplane, Boyle, Dallis, and Wellman.

Elwood filed her complaint in federal court on October 2, 2001. She amended her complaint on February 11, 2002 which was served on the defendants. On February 19, 2001 County, Wellman, and Dallis (at times referred to in this brief as "County Defendants") filed their Answer. On March 5, Delaplane filed his Motion to Dismiss. On March 13, Morin filed his Motion to Dismiss. On May 10, (entered May 16), the Court dismissed the First, Fifth, and Sixth COA's as to Morin and Delaplane, but denied their motions as to the

Fourth COA (making false claims of child abuse, Pen.C. Sec.11172).

County Defendants filed Motion for Judgment on Pleadings on August 6. The hearing on the motion took place on September 9. On September 13, (entered September 16) the District Court issued its decision and orders granting the County Defendants' Motion and dismissing all remaining defendants and causes of action, including claims against Jimenez. On October 9, the Court entered the Final Judgment. Elwood filed her Notice of Appeal on November 8.

II. THE DISTRICT COURT'S TWO ORDERS.

The Court devoted one paragraph of each of the decisions on the Motions to Dismiss and for Judgment on the Pleadings to the civil rights conspiracies (5th and 6th COA's). In both decisions the Court held that D. Elwood failed to establish a "meeting of the minds" of the coconspirators. Appendix F at 29a; Appendix E at 17a. The Court also granted a dismissal on the statutory claim under CA Civ. C. Sec.49a, for interference with personal relations. No leave to amend was granted, although Counsel for D. Elwood at oral argument on September 9 sought leave to amend so that the 5th and 6th Causes of Action could be alleged against the two social workers alone in addition to being pled as conspiracies. Notably, In the May 16 ruling, the Court did rule that D. Elwood had stated sufficient facts to state a statutory claim under CA Pen. C. Sec.11172 against the two fathers for making false reports against her which were used by the social workers in their reports to the Juvenile Court. The Court also stated:

> The Court agrees with Plaintiff that though Morin, Delaplane, and Boyle are private parties, her allegations satisfy the state action requirement of section 1983 because they appear to accuse Morin, Delaplane, and Boyle of operating as willful participants in joint activity with the state or its agents (here, Wellman and Dallis as social workers employed with the County of Los Angeles). [Citations.] Appendix F at 29a.

In the decision on the County Defendants' motion, the Court repeated the same ruling, that there were insufficient facts to show "meeting of the minds". Appendix E at 17a. The Court dismissed the remaining causes of action without prejudice because they were state claims, declining to retain jurisdiction over them. The Court found that Jimenez could not be included in the Fifth and Sixth Causes of Action because the 1st A. Complt. did not allege she acted under color of state action.

III. THE COURT OF APPEALS' TWO MEMORANDUM DECISIONS.

In the Memorandum Decision in Case No. 56077, the Court of Appeals affirmed the dismissal of the Fifth and Sixth Causes of Action against Boyle, stating that the complaint failed to "...allege facts showing that a therapist, Boyle, joined together with Joseph Morin and Rodney Delaplane (the fathers), and social workers, and agreed upon a common plan to deprive Elwood of continuing custody of her children in violation of her constitutional rights." Appendix C at 6a. The Court ruled that it was

> ...not enough that Boyle's conduct contributed to the Referee's decision not to return the children to

> Elwood, or ultimately had the effect of depriving Elwood of custody. Nor does it suffice that Boyle wrote reports upon which the social workers relied. Likewise, it is immaterial that Morin hired Boyle in violation of a court order, as there is no indication that Boyle knew of the order. Appendix C at 6a.

In the Memorandum Decision in Case No. 56918, the Court of Appeals likewise affirmed the dismissal of the Fifth and Sixth Causes of Action against Morin, Delaplane, Dallis, and Wellman because D. Elwood's

> ...complaint fails to set forth facts showing that the fathers, social workers, and therapist Robert Boyle agreed upon a common plan to deprive Elwood of continuing custody of her children in violation of her constitutional rights. ....[T]he facts do not show any agreement among these parties. [Citation.] It is not enough that Morin brought the children to Boyle, that Boyle's allegedly false reports were relied upon by the social workers, that the social workers defied court orders, and that the court denied custody. [Citation.]....We have carefully reviewed the complaint and see no factual basis upon which to infer that there was any agreed-upon plan to prevent Elwood from retaining, or regaining, custody. Appendix D at 10a.

The Court also claimed that "...no proper request for leave to amend was made in the district court, [and] we decline to consider whether leave should be granted either to cure defects or to state a claim under Cal. Gov't Code Sec.820.21. [Citations.]" Id. at 11a (p.5)

REASONS FOR GRANTING THE WRIT

I. THERE ARE TWO REASONS FOR GRANTING THE WRIT, NAMELY, THAT THE DISTRICT COURT'S AND NINTH CIRCUIT'S RULINGS ON THE "MEETING OF MINDS" ELEMENT OF A CONSPIRACY HAVE SO FAR DEPARTED FROM THE STANDARDS FOR PLEADING AND PROVING SUCH AN ELEMENT OF A CONSPIRACY AND THE AFFIRMANCE OF THE DENIAL OF LEAVE TO AMEND HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER AND THAT SHOULD THIS COURT ACCEPT CERTIORARI, ITS RULING IN THIS CASE WILL HAVE NATIONAL IMPACT ON BATTERED MOTHERS AND THEIR OFTEN-ABUSED CHILDREN FINDING THEMSELVES IN JUVENILE AND FAMILY COURTS.

A. WE REQUEST CERTIORARI BECAUSE WHAT HAPPENED TO D. ELWOOD IN JUVENILE COURT OCCURS IN JUVENILE AND FAMILY COURTS THROUGHOUT THE NATION ON A ROUTINE BASIS.

In the Summary of the California NOW Family Court Report 2002, p.3, it states:

> After significant research, CA NOW finds the present family court system in California to be crippled, incompetent, and corrupt. The bias in the system results in pathologizing, punishing, and discriminating against women. The system leaves decisions which should be made on facts in a courtroom to

> extrajudicial public and private personnel. The system precludes the parties, particularly the mother, from her rights to due process, including a trial, long cause hearing, or adjudication, to which she is entitled, much less an appeal of these decisions. Mothers are coerced into stipulations through the rubber stamping of definitive evaluations and reports which become the court*s ruling...***In the most egregious cases, perfectly fit mothers who were the primary caretakers of their children loose [sic] custody to the fathers who are motivated by evading support obligations, and are often known abusers.** Emphasis added.

The routine violation of human rights of battered women and their children is a nationwide epidemic. Wellesley College Center for Women sponsored The Battered Mothers Testimony Project: A Human Rights Report on Domestic Violence and Child Custody in the Massachusetts Family Courts documenting the repeated violations of what the report describes as "human rights" of battered mothers and their children by judges, the guardians ad litem (in California, the custody evaluators and court mediators), the social workers, probation officers, and father's counsel, including holding mothers to a higher standard of behavior and parenting than the father; ignoring, glossing over, minimizing, and often suppressing evidence of, acts of domestic violence; considering most allegations of partner and child abuse to be lies or grossly exaggerated; degrading and insulting the mothers; accepting fathers' charges at face value; falsifying reports; leaving out important information about the family; repeatedly skewing the reports on custody to favor the battering father; permitting the father to wear out the mother emotionally and financially with frivolous motions for change of custody; and the father marrying a woman just to have a stranger take care of the children.

In Judge Jack Weinstein's compassionate and courageous opinion in *In re: Nicholson, et al.,* Case No. 00-22-2229, E. D. N.Y., decided recently, the jurist makes it clear that

> Whatever the explanation, physical abuse of mothers and children, or the imminent threat of such ill treatment is not tolerated in our American society. Whether the mother, the family, or the immediate social group accepts cruelty as the norm or as permitted, it is a minimum assumption of our twenty-first century United States that it will not be tolerated. The government has the obligation to stop it and prevent its recurrence whenever it can. P.11, slip opin., emphasis added.

Having said that, nonetheless, Judge Weinstein found that the battered victims in the cases before him, all women were punished by having their children taken from them with no distinction being made between the culpability of batterer and victim. See, e.g., p.24, Id. The excesses, revictimization of the victim by the social workers and the legal system, and the routine violation of the constitutional rights of both the mother and her children which Judge Weinstein found are identical to those injustices and abuse documented in the CA NOW Report and in the Massachusetts Battered Mothers Testimony Project, and alleged in this lawsuit.

The legislative history of AB 1355 (codified as Govt. C. Sec.820.21, which statute is found in Appendix G at 31a) which abrogated absolute immunity for California social workers when they falsify evidence, commit perjury, or rely on testimony of witnesses which was coerced conclusively establishes that what D. Elwood alleges in her First Amended Complaint. is not only a proven practice of the County but is a statewide problem as well.

Assemblyperson Knowles who authored AB 1355 was appalled at the broad immunity social workers enjoyed:

> Social workers now have a civil immunity which surpasses the civil immunity of anyone else in our nation; even presidents, legislators, and prosecutors are accountable to the political process and the consent of the governed. Currently, there does not exist any effective check upon the arbitrary power or absolute immunity of social workers. Such a situation is antithetical to the American political philosophy and history of a system of accountable government power." A.Req.Jud.Not. p.2,AB 1355, "Concurrent in Senate Amendments".

Assemblyperson Knowles argued that the absolute immunity of social workers

> when coupled with their power and influence in a dependency case, has created a lack of checks that is needed to maintain an appropriate balance between these two types of harm. Id., p. 8.

The legislative history also points out that a judge may rely on complete hearsay to detain the children and keep them separated from their parents, as was done in this case, unless the parents themselves take the brave chance of challenging this authoritarian system and issue subpoenas to witnesses to rebut the hearsay of the jurisdictional report. Id. at p.28.

In a recent preliminary study prepared by Professor Geraldine Butts Stahly (Professor at California State University, San Bernardino and nationally-recognized expert in the area of domestic violence), entitled "Protective Mothers in Child Custody Disputes: A Study of Judicial Abuse", the

report showed that based on questionnaires filled out by 107 self-identified protective mothers from California and Arizona that 8% of the protective mothers were denied adequate presentation of information or witnesses. 67% lost custody in emergency court order. 65% were threatened with sanctions if they "talked publicly" about the case. 63% of the mothers were advised not to report abuse. 58% lost custody with no court reporter present as did D. Elwood initially in the family law proceeding involving Morin and then when De Miro turned the children over to the fathers without a court order, warrant, or pending juvenile court petition. 58% lost custody in an ex parte proceeding

The Report of the American Bar Association Commission on the 21st Century Judiciary states at p.3:

> As important as an independent judiciary is to the rule of law in a representative democracy, public trust and confidence are equally so. The consent of the governed is a defining feature of democracy. Without it, democratic institutions must inevitably collapse. That is especially true of the judiciary, which controls neither the sword nor the purse and must depend on public acceptance for its continued existence as an independent branch of government. To the extent that significant segments of the public think that judges are captured by special interests, controlled by the wealthy and powerful, and unconcerned about the rights of racial, ethnic and political minorities, our system of justice is in very serious trouble.

There are numerous other studies and reports which back up this claim. For example, in "Expose: The Failure of Family Courts to Protect Children from Abuse in Custody Disputes" published by Our Children, Our Future Charitable Foundation

(St. Charles and Crook, Editors, 2000), Richard Ducote, Attorney, who represents women throughout the nation who have taken their children into hiding when the system fails them and has been instrumental in getting legislation in Louisiana enacted into law protecting victims of domestic violence, contributed an article to the book in which he states:

> After twenty years in family law courtrooms throughout the country, I confidently say that no woman, despite very abundant evidence that her child has been sexually molested by her ex-husband or that she has been repeatedly pummeled by the violent father of her child, can safely walk into any family court in the country and not face a grave risk of losing custody to the abuser for the sole reason that she dared to present the evidence to the judge and ask that the child be protected. Id. at 11.

Nannette Sachs, Amicus for Domestic Justice, Brooklyn, New York at p.143, Id. states in her article, "The Courts as Persecutors of Child-Victims of Incest":

> ...Protective parents have an entirely opposite set of values and outlook that does not stand up well to the combativeness of a trial. The vast majority of custody decisions I have witnessed in fourteen years as an advocate have gone against what I believe any reasonable person would judge to be the best interests of the child.

In Professor Geraldine Butts Stahly's article at p.127 she indicates that a study of 150 randomly-selected marital dissolution cases filed in a Southern California courthouse "...supported the role of control and misogyny issues in custodial challenges by battering men." Further, she states

that "...a number of anecdotal cases suggest that long-term persistence by the batterer in pursuing and harassing the woman using legal as well as extralegal means may ultimately result in custody being awarded to the batterer. (American Psychological Association, 1996)." p.127.

In Karen Winner's Report entitled "Judge Michael Dufficy, Comm'r Sylvia Shapiro, and Court-Appointees in Marin County's Superior Court in CA" (The Justice Seekers, Inc. 2000), Ms. Winner states in "Note from the Author":

> The report was commissioned by a group of families and concerned citizens as an important step towards understanding the problems that exist in Marin County Superior Court in family law cases. The author, Karen Winner, investigated the conduct of Judge Dufficy, Commissioner Shapiro, and some of their appointees, and found evidence of serious wrongdoing. p.2, Id.

Ms. Winner drew the following conclusions based on cases filed between the mid-1990's and 2000 that J. Dufficy and Comm'r Shapiro engaged in "...a range of probable misconduct including:

* Diverting child support and maintenance (alimony) payments from children and needy spouses to cronies [attorneys, as their fees];

* Showing gross favoritism toward certain litigants and lawyers;

* Ignoring litigants' rights and procedures under the law;

* Accepting tainted, skewed psychological evaluations into evidence that results in the wrong parent being awarded custody of the child;

* Violating the Judicial Code of Ethics;

* Approving fee-gouging by experts and court-appointees;

* Keeping financial and business dealings with lawyers hidden (Judge Dufficy);

* Showing disrespect for litigants; lacking proper judicial demeanor (Commissioner Shapiro). Id., p.6

In the New York Court study funded by the U. S. Department of Justice and National Institute of Justice entitled "Domestic Violence, Visitation and Custody Decisions in New York Family Courts (O'Sullivan, May 2002), the report at p.41 shows that based on a sample of cases in Westchester Family Court that mothers were significantly more likely to receive a custody order than fathers.

> The one significant relationship found involved protection orders granted between 1995 and 1998: fathers who were enjoined by or had an OP against them by the mother during the three year period **were more likely to receive a visitation order than fathers in cases in which no family offense petition was ever filed.** Id. emphasis added.

Because of this finding and the fact that so many family offense petitions were dismissed or withdrawn, there were interviews of attorneys representing the battered women to

find out "...what was happening behind the numbers." Id. One lawyer stated, "...batterers are retaliating against victims who file criminal charges by seeking protection orders in family court: about 30% of her clients are the respondent in family court family offense, custody and visitation cases." Id. at 43.

The lawyers also generally encourage the mothers to tell the judge that the child should have a relationship with the father so that the mother does not appear to be vindictive towards the father [apparently, even if it is not in the interests of the children]. Most batterers want to see their children. However, most of the interviewed lawyers believed it was to assert their rights, not because they were genuinely attached to their children. Id. at 44.

The lawyers stated that they almost never ask that the father be denied visitation because "Many judges respond punitively to such a request. In one court, to ask for no visitation at all "is to incur incredible wrath." Id at 45. The fear of loss of custody if the judge rules that the mother did not prove violence "...was a recurrent theme that inhibits requests to deny visitation." Id.

In *In Re: Nicholson, supra,* Judge Weinstein relied on, and gave particular weight to, findings of National Council of Juvenile & Family Court Judges Family Violence Department as set out in a comprehensive 1999 report entitled *Effective Intervention in Domestic Violence & Child Maltreatment Cases: Guidelines for Policy and Practice* ("Nat'l Council Guidelines"). Id at 79.

The Nat'l Council Guidelines suggest that child welfare services blame victimized mothers for "failure to protect". Id. The Court noted that even the City Defendants' expert witness

wrote that the "[t]he typical battered wife is hardly passive. She actively seeks to prevent further victimization and is handicapped, not by her own psychological limitations, but by the *lack of concrete and effective remedies available from agencies of social control or other institutions."* Id at 81, emphasis in original.

The Nat'l Council Guidelines also stated that batterers should be held accountable. The Court also found that, as here, Child Welfare would often remove children from their homes before seeking court orders [as happened here and given over to abusive fathers.] Id. at 105.

B. THE RULING OF THE DISTRICT COURT AS SANCTIONED BY THE NINTH CIRCUIT THAT THERE WERE INSUFFICIENT FACTS ALLEGED IN THE COMPLAINT TO ESTABLISH "MEETING OF THE MINDS" WOULD MAKE IT IMPOSSIBLE TO ESTABLISH SUCH AN ELEMENT AND FLIES IN THE FACE OF PRIOR RULINGS BY THIS COURT AND BY THE NINTH CIRCUIT.

D. Elwood alleged that Defendants took the following overt acts in support of the conspiracy to deprive D. Elwood of physical custody of her children: 1) Boyle and Morin violated the family law court order and Morin brought Stephanie and Jordan to Boyle secretly, without the knowledge and consent of D. Elwood, their mother, and solely for the purpose of making up false allegations against the mother. 2) The social workers enlisted the services of Boyle to have him generate reports against the mother, including Danowsky and then Wellman. 3) The social workers, including Wellman, barred the mother from speaking with Boyle in order to create a closed process. 4)

The children were under the total control of Morin: the father brought the children to Boyle or called him late at night and had the children make the statements to Boyle. 5) Wellman and her predecessors refused to interview Tiffany to determine whether Jordan and/or Stephanie's statements as reported were true although they were supposed to obtain corroboration and Tiffany was not under the control of Morin and Boyle. 6) Boyle was unqualified to do whatever he was doing, and he was never appointed by Referee Skeba to be the therapist for the children or to conduct a custody evaluation. 7) The social workers violated Referee Skeba's order that no one was to interview the children but them and the children's attorney and went to Boyle to ask him to generate reports which they knew would violate the due process standards established by the California Supreme Court. 8) The social workers and Boyle knew of Morin's and R. Delaplane's desire for revenge and their pattern of making false child abuse charges against D. Elwood and, in the case of Morin, against her close friend, Meinke. 9) No one knew what Boyle's role was specifically. The social workers claimed he was providing therapy to both Morin and the children; whereas, Mr. Ridgley, Morin's court-appointed attorney, adamantly denied to Referee Skeba that Morin was receiving therapy from Boyle and successfully struck D. Elwood's testimony that she understood he was providing "therapy" to both father and children. 10) R. Delaplane had an ax to grind since he hated his brother for becoming romantically involved with his former wife and wanted to "get even" with D. Elwood.

This Court has repeatedly ruled that to establish a conspiracy, circumstantial evidence, in particular, the concerted behavior of the alleged coconspirators may be relied upon: In *Adickes v. Kress & Co.*, 398 U.S. 144, 158 (1970) this Court stated:

> If a policeman were present, we think it would be open to a jury, in light of the sequence that followed, to infer from the circumstances that the policeman and a Kress employee had a "meeting of the minds" and thus reached an understanding that petitioner should be refused service.

In *American Tobacco Co. v. U.S.*, 328 U.S. 781 (1946), an antitrust conspiracy case, this Court set out broad rules for proving conspiracy, emphasizing that the conspiracy may be proved "...from the action taken in concert by the parties to it":

> It is not the form of the combination or the particular means used but the result to be achieved that the statute condemns. It is not of importance whether the means used to accomplish the unlawful objective are in themselves lawful or unlawful. Acts done to give effect to the conspiracy may be in themselves wholly innocent acts. Yet, if they are part of the sum of the acts which are relied upon to effectuate the conspiracy which the statute forbids, they come within its prohibition. No formal agreement is necessary to constitute an unlawful conspiracy. Often crimes are a matter of inference deduced from the acts of the person accused and done in pursuance of a criminal purpose. **Where the conspiracy is proved, as here, from the evidence of the action taken in concert by the parties to it, it is all the more convincing proof of an intent to exercise the power of exclusion acquired through that conspiracy. ...Where the circumstances are such as to warrant a jury in finding that the conspirators had a unity of purpose or a common design and understanding, or a**

meeting of minds in an unlawful arrangement, the conclusion that a conspiracy is established is justified.

In 1984, again this Court emphasized in *Copperweld Corp. v. Independence Tube Corp.*, 467 U.S. 752 (1984) that

> A § 1 agreement may be found when "the conspirators had a unity of purpose or a common design and understanding, or a meeting of minds in an unlawful arrangement." *American Tobacco Co.* v. *United States,* 328 U. S. 781, 810 (1946)

In *Monsanto Co. v. Spray-Rite Service Corp.*, 465 U.S. 752, 809 (1984) this Court again reaffirmed the use of

> ...direct or circumstantial evidence that reasonably tends to prove that the manufacturer and others "had a conscious commitment to a common scheme designed to achieve an unlawful objective."[Citation]

The Ninth Circuit also has held that circumstantial evidence of Defendants' actions is generally the only way that the meeting-of-the-minds element can be established. In *Mendocino Environmental Center v. Mendocino City*, 192 F.3d 1283, 1301 (9th Cir. 1999), the Ninth Circuit discussed "meeting of minds" requirement stating that the defendants must have "'by some concerted action, intend[ed] to accomplish some unlawful objective for the purpose of harming another which results in damage.' [fn 33] [Citations.]"

The Court went on to hold that "Such an agreement need not be overt, and may be inferred on the basis of circumstantial evidence such as the actions of the defendants."

Accord, *Radcliffe v. Rainbow Constr. Co.*, 254 F.3d 772 (9th Cir. 2001):

> We have recognized that "[d]irect evidence of improper motive or an agreement among the parties to violate a plaintiff's constitutional rights will only rarely be available." [Citation]. It will therefore almost always be necessary to infer such agreements from circumstantial evidence such as the actions of the defendants. Id. For example, a showing that the alleged conspirators have committed acts that are "unlikely to have been undertaken without an agreement" may allow a jury to infer the existence of a conspiracy.

In this case, the overt acts were obvious. The social workers made no pretense that they would continue going to, and relying on, Boyle, that they would not obey the juvenile court orders, that they would not heed the requirements of due process, that they would not allow the mother to confer with Boyle, that they would not seek corroboration of what Boyle and Morin claimed the children were saying. There is no question but that all the alleged participants had one common objective: make sure that Elwood would never regain custody of her children.

The District Court already recognized that there was concerted action between the nongovernmental actors, on the one hand -- Morin, Boyle, and Delaplane -- and the two social workers, on the other. Thus, having found sufficient allegations of concerted action to establish that all the defendants acted under color of state law, the District Court then negated that finding by ruling there was no meeting of the minds despite their acting under color of state law.

The actions of the two fathers, of Boyle, and of the social workers are such that they could not have written their reports without prior agreement with one another on how to proceed. Morin would bring the children (Stephanie and Jordan) to Boyle; Boyle would write the false reports about Elwood, claiming to rely primarily on Jordan; the social workers would then take the reports and attach them to, and incorporate them in, their own reports; the social workers would refuse to interview Tiffany because Tiffany's statements would not corroborate but uncover the falsity; the social workers would continue to defy two court orders to accomplish their unconstitutional objectives; the Court adopted the reports without question; Elwood continued to be denied custody on the basis of these one-sided and falsified reports.

C. THE COURT OF APPEALS RULED INCORRECTLY THAT D. ELWOOD HAD NOT SOUGHT LEAVE OF COURT AND AT THE SAME TIME IGNORED THIS COURT'S AND ITS OWN PRECEDENTS THAT LEAVE TO AMEND SHOULD BE GIVEN EVEN WHERE THE PLAINTIFF HAS NOT ASKED FOR IT.

The Ninth Circuit ruled that D. Elwood had not sought leave to amend in the District Court. Appendix D at 8a. Elwood brought this factual error to the attention of the Ninth Circuit in her Petition for Rehearing. The Court did not correct this error.

At oral argument when Ms. Barry sought leave to include, besides the conspiracy claim against the social workers, constitutional claims against them alone, the Court stated:

Well, why don't you wait and see what happens,

whether I'm going to dismiss this or not.

D. Elwood also sought leave in the Ninth Circuit to include the state claim under Sec.820.21 since California had eliminated all immunity for social workers who falsify evidence and rely on coerced testimony, and this was the graveman of the complaint agains the social workers, the fathers, and the therapist.

Neither the District Court nor the Ninth Circuit addressed the issue of amending the complaint so that D. Elwood could maintain the Fifth and Sixth Causes of Actions against Wells and Dallis, which Ms. Barry requested at oral argument in the District Court and in the Ninth Circuit. The District Court granted judgment and never reached the issue of whether there were federal claims against the social workers alone. Neither did the Ninth Circuit. D. Elwood devoted a significant portion of her opposition to the Motion for Judgment on the Pleadings in the District Court and in her briefs in the Ninth Circuit to the issue of the immunity of the social workers, showing how they were liable especially under the Ninth Circuit's recent ruling in *Miller v. Gamie*, No. 01-15491, decided by en banc on July 9, 2003.

This Court ruled in *Foman v. Davis*, 371 U.S. 178, 182 (1962) that the District Court should have allowed amendment "since it appears from the record that the amendment would have done no more than state an alternative theory of recovery." This Court cited Fedral Rule of Civil Procdure 15(a) which declares that leave to amend "shall be freely given when justice so requires", and denial of the motion without any apparent justifying reason was an abuse of discretion.

In keeping with the spirit of this Court's ruling in *Foman, supra,* the Ninth Circuit has also ruled

> A district court "shall grant leave to amend freely 'when justice so requires. '" [Citation.] We have stated that "this policy is to be applied with extreme liberality." [Citation.] *Owens v. Kaiser Foundation Health Plan, Inc* 244 F.3d 708, 712 (9th Cir. 2001)

Further, the Ninth's Circuit ruling, although erroneous, that D. Elwood could not seek leave to amend because she did not request it below also flies in the face of its prior rulings.

In *Lopez, Jr. v. G.A. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000), the Court noted:

> And in a line of cases stretching back nearly 50 years, we have held that in dismissing for failure to state a claim under Rule 12(b)(6), "a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." [Citations.]

Accord, *Doe v. United States of America*, 58 F.3d 494, 497 (9th Cir. 1995): ("It is of no consequence that no request to amend the pleading was made in the district court [*Schreiber Distributing v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir. 1986).]).

See also *Cook, Perkiss & Liehe v. N. Cal. Collection Service*, 911 F.2d 242, 246-247 (9th Cir. 1990): (In dismissing for failure to state a claim, "a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not

possibly be cured by the allegation of other facts.[Citation.] Therefore, it is of no consequence that Cook did not file a formal motion, accompanied by a proposed amendment, requesting leave to amend.")

As already stated, neither the District Court nor the Ninth Circuit provided reasons why the social workers alone could not remain as defendants in the Fifth and Sixth Causes of Action, why the complaint could not be amended to include a state claim pursuant to Govt. C. Sec.820.21, and why the additional claim for denial of First Amendment rights could not be included.

CONCLUSION

For the reasons set forth in this Petition, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

UNTIED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 02-56077

[Filed FEB 23 2004]

DARLA ELWOOD,
Plaintiff – Appellant,

v.

JOSPEH MORIN,
Defendant,

and,

ROBERT BOYLE,
Defendant – Appellee.

On Appeal From
Central District of California
Los Angeles
D.C.No.CV-01-08582 LGB

Before: B. FLETCHER, RYMER, and GRABER, Circuit Judges.

ORDER

The panel has unanimously voted to deny the petition for rehearing. Judges Rymer and Graber voted to deny the petition for rehearing en banc and Judge Fletcher so recommended.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P.35.

The petition for rehearing, and petition for rehearing en banc are DENIED.

APPENDIX B

UNTIED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 02-56918

[Filed FEB 23 2004]

DARLA ELWOOD,
Plaintiff – Appellant,

v.

JOSEPH MORIN; SONIA JIMENEZ; COUNTY OF LOS ANGELES; ANN WELLMAN; BARBARA DALLIS; RODNEY DELAPLANE,
Defendants – Appellees,

and,

ROBERT BOYLE,
Defendant.

On Appeal From
D.C. No. CV-01-08582-LGB

Before: B. FLETCHER, RYMER, and GRABER, Circuit Judges.

ORDER

The panel has unanimously voted to deny the petition for rehearing. Judges Rymer and Graber voted to deny the petition for rehearing en banc and Judge Fletcher so recommended.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for rehearing and petition for rehearing en banc are DENIED.

APPENDIX C

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 02-56077

[Filed January 2, 2004]

DARLA ELWOOD,
Plaintiff - Appellant,

v.

JOSEPH MORIN,
Defendant,

and,

ROBERT BOYLE,
Defendant - Appellee.

Appeal from the United States District Court
for the Central District of California
D.C. No. CV-01-08582-LGB
Lourdes G. Baird, District Judge, Presiding

Before: B. FLETCHER, RYMER, and GRABER, Circuit Judges.

MEMORANDUM*

Darla Elwood appeals the district court's dismissal of her 42 U.S.C. § 1983 action against Robert Boyle. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Elwood's complaint fails to allege facts showing that a therapist, Boyle, joined together with Joseph Morin and Rodney Delaplane (the fathers), and social workers, and agreed upon a common plan to deprive Elwood of continuing custody of her children in violation of her constitutional rights. Elwood argues that Boyle was the lynchpin of a plan to prevent her from regaining custody; her theory is that the fathers had their agenda (to punish Elwood for leaving Morin and Delaplane and becoming involved with her ex-husband's brother), the social workers had theirs (to punish Elwood for challenging social worker authority), and Boyle's allegedly false reports made the case without which the Juvenile Court Referee could not have decided to deprive Elwood of custody. However, it is not enough that Boyle's conduct contributed to the Referee's decision not to return the children to Elwood, or ultimately had the effect of depriving Elwood of custody. Nor does it suffice that Boyle wrote reports upon which the social workers relied. Likewise, it is immaterial that Morin hired Boyle in violation of a court order, as there is no indication that Boyle knew of the order. We have reviewed the complaint, with particularly careful attention to those paragraphs to which Elwood has directed our attention, and see no factual basis upon which to infer that Boyle is tied into an agreement to violate Elwood's constitutional rights.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Conclusory allegations of conspiracy are insufficient. *See Franklin v. Fox*, 312 F.3d 423, 441 (9th Cir. 2002) (explaining the requirements of a conspiracy claim under § 1983); *Mendocino Envtl. Ctr. v. Mendocino County*, 192 F.3d 1283, 1301 (9th Cir. 1999) ("[A] showing that the alleged conspirators have committed acts that are unlikely to have been undertaken without an agreement may allow a jury to infer the existence of a conspiracy.") (quotation marks omitted); *Woodrum v. Woodward County*, 866 F.2d 1121, 1126 (9th Cir. 1989) (stating that conclusory allegations of a conspiracy do not support a § 1983 claim).

We decline to consider Elwood's suggestion that we remand with leave to amend, for she failed to seek leave in the district court and proffers no additional facts that could be pled to state a claim for conspiracy against Boyle. *See Ventura Packers, Inc. v. F/V Jeanine Kathleen*, 305 F.3d 913, 917 n.1 (9th Cir. 2002) (declining to address a request for leave to amend made for the first time on appeal), *cert. denied*, 123 S. Ct. 1910 (2003); *Alaska v. United States*, 201 F.3d 1154, 1163-64 (9th Cir. 2000) ("Where a party does not ask the district court for leave to amend, the request on appeal to remand with instructions to permit amendment comes too late.") (quotations and alteration omitted).

AFFIRMED.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 02-56918

[Filed January 2, 2004]

DARLA ELWOOD,
Plaintiff - Appellant,

v.

JOSEPH MORIN, SONIA JIMENEZ; COUNTY OF LOS ANGELES; ANN WELLMAN; BARBARA DALLIS; RODNEY DELAPLANE,
Defendants – Appellees,

and,

ROBERT BOYLE,
Defendant.

Appeal from the United States District Court
for the Central District of California
D.C. No. CV-01-08582-LGB
Lourdes G. Baird, District Judge, Presiding

Before: B. FLETCHER, RYMER, and GRABER, Circuit Judges.

MEMORANDUM*

Darla Elwood appeals the district court's dismissal of her 42 U.S.C. Sec. 1983 action against the County of Los Angeles (the County), Ann Wellman and Barbara Dallis (the social workers), and Rodney Delaplane and Joseph Morin (the fathers). She also appeals denial of her motion for default judgment against Sonia Jimenez for defamation and invasion of privacy.[1] We affirm.[2]

I

We have jurisdiction because Elwood's notice of appeal was timely given entry of final judgments in favor of the County, Wellman, and Dallis on October 9, 2002, in favor of

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit as provided by Ninth Circuit Rule 36-3.

[1] Elwood has asked for judicial notice of all briefs field in companion cases *Elwood v. Drescher*, No. 02-56917, and *Elwood v. Boyle*, No. 02-56077, which we deny, and of the legislative history of AB 1335 (Cal. Gov't Code Sec. 820.21), which we grant.

[2] We review de novo a dismissal for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6) and judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c). *Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003); *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001). We review for abuse of discretion the district court's refusal to enter a default judgment. *See Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986).

Jimenez on November 8, 2002, and in favor of Morin and Delaplane on November 15, 2002. Fed. R. Civ. P. 58(a); Fed. R. App. P.(a)(2).

II

Elwood's complaint fails to set forth facts showing that the fathers, social workers, and therapist Robert Boyle agreed upon a common plan to deprive Elwood of continuing custody of her children in violation of her constitutional rights. She contends that the participants had the same objective, and that the action of the fathers, Boyle and the social workers could not have been done without prior agreement. However, the facts do not show any agreement among these parties. *See Franklin v. Fox*, 312 F.3d 423, 441 (9th Cir. 2002). Conclusory allegations do not suffice. *Woodrum v. Woodward County*, 866 F.2d 1121, 1126 (9th Cir. 1989). It is not enough that Morin brought the children to Boyle, that Boyle's allegedly false reports were relied upon by the social workers, that the social workers denied court order, and that the court denied custody. *See Mendocino Envtl. Ctr. v. Mendocino County*, 192 F.3d 1283, 1301 (9th Cir. 1999) ("[A] showing that the alleged conspirators have committed acts that are unlikely to have been undertaken without an agreement may allow a jury to infer the existence of a conspiracy.") (quotations omitted). We have carefully reviewed the complaint and see no factual basis upon which to infer that there was any agreed-upon plan to prevent Elwood from retaining, or regaining, custody. Accordingly, the facts pled fail to state a claim for relief, and dismissal was appropriate.

III

The district court did not abuse its discretion in denying Elwood's motion for entry of default judgment against

Jimenez, because Elwood failed to comply with Central District of California Local Rule 55-1. Similarly, the court appropriately used its discretion to deny Elwood's ex parte application for leave to resubmit a default judgment because it was brought ex parte instead of by way of a noticed motion. After dismissing the federal claims against Jimenez, the district court acted within the discretion conferred by 28 U.S.C. Sec. 1367(c)(3) in dismissing Elwood's supplemental claims. *See Biner v. Gillespie*, 184 F.3d 1059, 1066 (9th Cir. 1999) ("Under 28 U.S.C. Sec. 1367(c)(3), a district court may elect, in its discretion, not to exercise supplemental jurisdiction over state claims if it has dismissed the original jurisdiction federal claims.").

IV

While a bare allegation that county worker's conduct conformed to county policy, practice, or custom is sufficient to withstand a motion to dismiss, *see Karim-Panahi v. L.A. Police Dep't*, 839 F.2d 621, 624 (9th Cir. 1988), here there is no injury from unconstitutional conduct that can be the basis for municipal liability. *See, e.g., City of Canton v. Harris*, 489 U.S. 378, 386 (1989) (observing that the first inquiry in municipal cases is whether there is a direct causal link between a policy or custom and the alleged constitutional deprivation); *Oviatt v. Pearce*, 954 F.2d 1470, 1474 (9th Cir. 1992) (explaining elements of *Monell* liability).

V

Because no proper request for leave to amend was made in the district court, we decline to consider whether leave should be granted either to cure defects or to state a claim under Cal. Gov't Code Sec. 820.21. *See Ventura Packers, Inc. v. F/V Jeanine Kathleen*, 305 F.3d 913, 917n.1 (9th cir.

2002) (declining to address a request for leave to amend made for the first time on appeal), *cert. Denied*, 123 S. Ct. 1910 (2003); *Alaska v. United States*, 201 F.3d 1154, 1163-64 (9th Cir. 2000) ("Where a party does not ask the district court for leave to amend, the request on appeal to remand with instructions to permit amendments come too late.") (quotations and alteration omitted).

AFFIRMED.

APPENDIX E

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CV 01-8582 LGB (FMOx)

[Filed September 13, 2002]

Darla Elwood	)
Plaintiff,	)
	)
v.	)
	)
Joseph Morin, et al.	)
Defendants.	)
	)

ORDER GRANTING DEFENDANTS COUNTY OF LOS ANGELES, ANN WELLMAN AND BARBARA DALLIS MOTION FOR JUDGMENT ON THE PLEADINGS, DISMISSING IN PART SONIA JIMENEZ AS DEFENDANT, AND DISMISSING WITHOUT PREJUDICE ALL REMAINING STATE CLAIMS

I. INTRODUCTION

By the instant motion defendants Ann Wellman (hereinafter "Wellman"),[1] Barbara Dallis (hereinafter "Dallis"),[2] and the County of Los Angeles (hereinafter "the County")[3] seek to dismiss, without leave to amend, plaintiff Darla Elwood's (hereinafter "Elwood" or Plaintiff) First Amended Complaint.

II. FACTUAL AND PROCEDURAL BACKGROUND

Because the parties are intimately familiar with the factual and procedural background of the instant action, only those facts that are pertinent to the disposition of the instant motions are laid out here. Subsequent to proceedings in the Juvenile Court involving Plaintiff's children and the removal of those children from her custody, Plaintiff filed the instant suit against Morin (one of the fathers of her children), Delaplane (one of the fathers of her children), Boyle (a therapist engaged in private practice who testified in Juvenile Court about his treatment of Plaintiff's two children, Stephanie and Jordan, and who submitted his reports into evidence), Sonia Jimenez, social worker Ann Wellman and her supervisor Barbara Dallis, and the County of Los Angeles alleging seven causes of action.

Plaintiff's first cause of action in the First Amended Complaint ("Pl's FAC") governing the suit alleges a violation

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[1] Wellman is a social worker with the County of Los Angeles.

[2] Dallis is Wellman's supervisor at the County of Los Angeles.

[3] Wellman, Dallis and the County are hereinafter collectively referred to as "Defendants."

of California Civil Code § 49(a) against all defendants including Wellman, Dallis and the County the unlawful taking or enticement of a child from his parent) on the grounds that they deprived her of the physical custody of her children. Pl's FAC ¶¶ 87-94. Plaintiff's second and third causes of action are alleged solely against Jimenez for defamation and invasion of privacy. Id. ¶¶ 95-105. In Plaintiff's fourth cause of action, she charges Morin and Delaplane with violating California Penal Code Section 11172(a) by making false charges of child abuse/neglect against her beginning in 1997 and continuing to May 2001. Id. ¶¶ 106-111. Plaintiff's fifth and sixth causes of action allege violations of her due process and equal protection rights (based on her gender and status as a victim of domestic violence) under the Fourteenth Amendment against all individual defendants including Wellman and Dallis. Id. ¶¶ 112-17. Plaintiff's final cause of action is Section 1983 claim against the County.

By a May 10, 2002 Minute Order, this Court granted defendant Boyle's motion to dismiss in its entirety, defendant Morin and Delaplane's motion to dismiss as to all of Plaintiff's claims against them except as to the fourth claim.

By the instant motions, filed on August 6, 2002, Defendants Wellman, Dallis and County seek to dismiss Plaintiff's entire amended complaint against each of them. Plaintiff filed her opposition on August 27, 2002. Defendants filed their reply on September 3, 2002.

I. LEGAL STANDARDS AND ANALYSIS

A. Legal Standards

Federal rule of Civil Procedure 12(c) provides that "[a]fter the pleadings are closed, but within such time as not

to delay the trial, any party may move for judgment on the pleadings." Fed. R. Civ. P. 12(c). Rule 12(c) motions challenge the legal sufficiency of the opposing party's pleadings and can be used to assert lack of subject matter jurisdiction. Benas . Baca et al., 2001 WL 485168 * 2 (C.D. Cal. 2001); see Schwarzer et al., *Federal Civil Procedure Before Trial* § 9:316 (1999). Judgment on the pleadings is properly granted when, even if all material facts in the pleading attacked are true, the moving party is entitled to judgment as a matter of law. See Hal Roach Studios v. Richard Feiner & Co., 896 F.2d 1542, 1550 (9th Cir. 1990).

In reviewing Defendants' motion, this Court thus must assume the truthfulness of the material facts alleged in the complaint and draw all reasonable inferences in favor of Plaintiff as the nonmoving party. Benas, 2001 WL 485168 * 2; see Gen'l Conf. Corp. of Seventh-Day Adventist Congregational Church, 887 F.2d 228, 230 (9th Cir. 1989). Defendants are not entitled to judgement on the pleadings if Plaintiff's complaint raisses issues of fact, which, if proved, would support recovery. Benas, 2001 WL 485168 * 2.

Consequently, the standard applied on a Rule 12(c) motion is essentially the same as that applied on a Rule 12(b)(6) motion. Scwarzer, et al., *Federal Civil Procedure* § 9:335.

B. Analysis

I. Plaintiff's fifth and sixth claims against Wellman and Dallis

Plaintiff's fifth and sixth claims against Wellman and Dallis allege section 1983 violations stemming from their "conspiracy" to deprive Plaintiff of her liberty interest in the continued custody of her children, of her due process rights,

and of her equal protection rights. Pl's First Amended Complaint ¶¶ 112-17.[4] To prove conspiracy between Wellman, Dallis, Morin, Delaplane, and Boyle, an agreement or meeting of the minds to violate Plaintiff's constitutional rights must be shown. Woodrum v. Woodrum County, Oklahoma, 866 f.2d 1121, 1126 (9th Cir. 1989). Plaintiff's

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[4] Defendants Dallis, Wellman and the county have also raised the statute of limitations as a defense against Plaintiff;s Section 1983 claims and Plaintiff's first claim under Cal. Civ. Code § 49(a). Dfs.' Memorandum of Points and Authorities at 4. Section 1983 actions are characterized as personal injury actions for statute of limitations purposes. Trimble v. City of Santa Rosa, 49 F.3d 583, 585 (9th Cir. 1995). In California, the statute of limitations for personal injury actions is one year. Id. citing Cal.Civ. Proc. Code § 340(3). Defendants bear the initial burden of proof on the statute of limitations issue. Samuels v. Mix, 22 Cal.4th 1, 8 (1999); see also O'Connor v. Boeing North American, Inc., 92 F.Supp.2d 1026, 1037 (C.D. Ca 2000) ("a defendant raising the statute of limitations as an affirmative defense has the burden of proving the action is time barred."); Cal. Evid. Code § 115 ("except as otherwise provided, the burden of proof requires proof by a preponderance of the evidence"). In this case, the complaint was filed on October 3, 2001. There are, however, allegations in the complaint that appear to have taken place less than one year from the filing date of the complaint. See e.g. Complaint ¶ 72, incorporated into all claims, states in part: "When Wellman and Dallis came on the case, they continued on it until the case was dismissed in October of 2001. Wellman told D. Elwood at the time she took over, 'There will no change in the custody order.' To ensure that D. Elwood would never fain custody of her children..., Wellman committed the following due process violations [while in charge of D. Elwood's case] which were ratified by Dallis..." Thus, Wellman, Dallis and the County have not carried their burden to show that, based on the pleadings, Plaintiff's claims are time-barred.

conclusory allegations that the defendants here conspired with Morin, Delaplane and Boyle do not support claims for violation of her constitutional rights under Section 1983. Id. Therefore, Wellman and Dallis' motions to dismiss Plaintiff's fifth and sixth claims are GRANTED.[5]

2. Plaintiff's seventh claim against the County.

Plaintiff's seventh claim against the County is for Section 1983 municipal liability under Morin v. Dept. of Social Services, 436 U.S. 658 (1978). Under Monell. a local government body is liable when the alleged unconstitutional action implements or executes a policy statement adopted or promulgated by the body's officers. Id. at 690. In this case, Plaintiff's generalized and conclusory allegations that the "County maintains a policy, practice, custom and habit whereby if parents challenge a social worker, they are punished by having their children taken from them" and that "[t]his is a custom engaged in throughout the State of California" do not pass muster under Monell. See Board of the County Commissioners v. Brown, 520 U.S. 397, 397-98 (1977) ("a 'policy; giving rise to liability cannot be established merely by identifying a policymaker's conduct that is properly attributable to the municipality." Instead, "a plaintiff must show that the municipal action was taken with the requisite degree of culpability and must demostrate a direct causal link between the municipal action and the deprivation of federal right.") citing Monell, 436 U.S. at 692-94.

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[5] This holding is consistent the Court's May 10, 2002 Minute Order dismissing Plaintiff's fifth and six claim against Boyle, Morin and Delaplane.

Therefore, the County's motion to dismiss Plaintiff's seventh claim is hereby GRANTED.

3. Claims against Sonia Jimenez

A trial court may dismiss a claim sua sponte under F.R.Civ.P. 12(b)(6). Omar v. Sea-Land Service, Inc., 813 F.2d 986, 991 (9th Cir. 1987). Such a dismissal may be made without notice where the claimant cannot possibly win relief. Id. In this case, Plaintiff;s complaint state two claims against defendant Sonia Jimenez ("Jimenez") that are based on federal law: 1) the fifth claim for conspiracy to deprive Elwood of her liberty interest in continuing custody of children and denial of procedural due process under the Fourteenth Amendment; and 2) the sixth claim for conspiracy to deprive Elwood of equal protection under the Fourteenth Amendment.

Plaintiff's allegations against Jimenez are as follows:

> Defendant Sonia Jimenez ("Jimenez") is a former chid care worker at Longhorn Child Care Center ("Longhorn") and at Cimarran Child Care Center ("Cimarron") both located in Palmdale. She is also in the employ of Morin caring for Jordan and Stephanie. She sleeps over night at his home, and on information and belief, has become sexually intimate with him. **Complaint ¶ 6.**
>
> Morin also enlisted the services of Jimenez in his conspiracy to deprive Elwood of custody of Stephanie and Jordan becoming her lover. Jimenez has very little training in child development. She is 14 years younger than Morin and was about 23 years old at the

he became involved with her. On information and belief, they are still involved and she visits his home and the children.
Complaint ¶ 35.

Morin convinced Jimenez to spy on Elwood, as a result of which Elwood was the only parent whose phone calls to her children were monitored and logged in Longhorn's log book, and whose conduct and behavior were reported to Boyle. At not time did Jimenez notify Elwood of what she was doing although the court order giving Elwood joint legal custody was in the children's file, and Jimenez knew or should have knwo that spying on a parent with joint legal custody affected Elwood's right to know what was happening to her children at the center. Jimenez also ordered other coworkers to spy on and report Elwood's activities with her children, she continued reporting Elwood's activities to Morin, and then to Boyle in November of 1999, while never notifying Elwood of this serious conflict of interest. Elwood learned about none of this until May 2001.
Complaint ¶ 37.

Jimenez continued work at Longhorn as a child care worker, and then moved to Cimarron when their father transferred Stephanie and Jordan to the Center. She began staying overnight at Morin's home, and performing child care chores Morin should have been doing for his children, including taking them and picking them up from the child care center, feeding, bathing, and putting them to bed, overseeing their homework, and generally serving as their surrogate

parent, instead of their father. She continues providing such services to this day.
Complaint ¶ 38.

In any Section 1983 action the initial inquiry must focus on whether the two essential elements to a Section 1983 action are present: (1) whether the conduct complained of was committed by a person acting under the color of state law; and (2) whether this conduct deprived a person of rights, privileges or immunities secured by the Constitution or the laws of the United States. Parratt v. Taylor, 451 U.S. 527 (1981). In this case, the allegations against Jimenez are that she was a child care worker at two different day care centers where Morin had enrolled the children and that she ultimately befriended Morin. Complaint ¶¶ 6, 35, 37. Plaintiff further alleges that Jimenez conspired with Morin and reported the children's activities to their private therapist, Boyle. Complaint ¶ 37. Plaintiff has not alleged, nor could she, that Jimenez was somehow acting under the color of state law. Therefore, the court finds that Plaintiff's allegations do nor support a 1983 claim against Jimenez. As such, the court dismisses Plaintiff's fifth and sixth claims against Jimenez.

4. Dismissal of remaining claims:

Under 28 U.S.C. § 1367(c) (3), a district court may decline to exercise supplemental jurisdiction over a state law claim once the court has dismissed all claims over which it has original jurisdiction. See Lapides v. Board of Regents of University System of Georgia, 122 S.Ct. 1640, 1643 (2002) (citing to 29 U.S.C. § 1367 (c) (3) and holding that "[i]t has also become clear that, in the absence of any viable federal claim, the Federal District court might well remand [plaintiff's] state-law tort claims...to state court."). The complaint alleges only three federal claims - claims 5, 6 and

7. All defendants in each of these claims have been dismissed by this order or the Court's May 10, 2002 Minute Order. Thus, the court dismisses without prejudice all remaining claims pursuant to 28 U.S.C. § 1367 (c) (3). See Binder v. Gillespie, 184 F.3d 1059, 1066 (9th Cir. 2002) (stating that "[u]nder 28 U.S.C. § 1367 (c) (3), a district court may elect, in its discretion, not to exercise supplemental jurisdiction over state claims if it has dismissed the original jurisdiction federal claims."

IV. CONCLUSION

Based on the foregoing , Plaintiff's claims five and six against Wellman, Dallis, and Jimenez are hereby DISMISSED. Claim seven against the County is also DISMISSED. The remaining state law claims are hereby DISMISSED without prejudice.

IT IS SO ORDERED.

Dated: September 13, 2002

/S/
LOURDES G. BAIRD
United States District Judge

APPENDIX F

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES–GENERAL

Case No.: CV 01-8582 LGB (FMOx) **Date:** May 10, 2002

Title: **Darla Elwood v. Joseph Morin et al.**

DOCKET ENTRY

PRESENT: Hon. Lourdes Baird, United States District Judge

Catherine Jeang	None Present
Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF:
None

ATTORNEYS PRESENT FOR DEFENDANTS:
None

PROCEEDINGS: In Chambers

The Court is in receipt of Defendants Joseph Morin, Rodney Delaplane, and Robert Boyle's motions to dismiss Plaintiff's First Amended Complaint, Plaintiff's opposition paper, and Defendants' reply briefs. The instant motions are appropriate for resolution without oral argument. Fed. R.

Civ. P. 78; Local Rule 7.11. For reasons set forth below, the Court GRANTS Defendant Boyle's motion to dismiss and GRANTS IN PART AND DENIES IN PART Defendants Morin and Delaplane's motions to dismiss.[1]

Because the parties are intimately familiar with the factual and procedural background of the instant action, only those facts that are pertinent to the disposition of the instant motion are laid out here. Subsequent to proceedings in the Juvenile Court involving Plaintiff's children and the removal of those children from her custody, Plaintiff filed the instant suit against Morin (one of the father of her children), Delaplane (on the fathers of her children), Boyle (a therapist engaged in private practice who testified in Juvenile Court about his treatment of Plaintiff's two children, Stephanie and Jordan, and who submitted his reports into evidence), Sonia Jimenez, social worker Ann Wellman and her supervisor Barbara Dallis, and the County of Los Angeles alleging seven causes

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[1] The Court is aware of the fact that each of the defendants has submitted requests for the Court to take judicial notice of certain documents. Because the Court finds reliance on the documents reference in the requests to be unnecessary for its disposition of the instant motions and because some of the documents (i.e. Plaintiff's complaint) need not be judicially noticed in order for this Court to consider them, the Court declines to grant the requests. Therefore, Plaintiff's ex parte request to strike Defendant Morin's request for judicial notice on the grounds that service was not made upon her until May 8, 2002 is moot and is thereby DENIED. Plaintiff's other ex parte requests, namely that she did not receive notice of Defendant Morin's motion because it failed to expressly delineate each of the grounds for his motion in the caption and that the motion should be stricken, and that the Court should award attorney's fees to her in the amount of $2000 due to the "bad faith" conduct of Morin's counsel is DENIED.

of action. Plaintiff's first cause of action in the First Amended Complaint ("Pl's FAC") governing the suit alleges a violation of California Civil Code § 49(a) against all defendants including Morin, Delaplane and Boyle (the unlawful taking or enticement of a child from his parent) on the grounds that they deprived her of the physical custody of her children. Pl's FAC ¶¶ 87-94. Plaintiff's second and third causes of action are alleged solely against Jimenez for defamation and invasion of privacy. Id. ¶¶ 95-105. In Plaintiff's fourth cause of action, she charges Morin and Delaplane with violating California Penal Code Section 11172(a) by making false charges of child abuse/neglect against her beginning in 1997 and continuing to May 2001. Id. ¶¶ 106-111. Plaintiff's fifth and sixth causes of action allege violations of her due process and equal protection rights (based on her gender and status as a victim of domestic violence) under the Fourteenth Amendment against all individual defendants including Morin, Delaplane, and Boyle. Id. ¶¶ 112-17. Plaintiff's final cause of action is a Section 1983 claim against the County of Los Angeles. By the instant motions, Defendants Morin and Delaplane seek to dismiss Plaintiff's first, fourth, fifth, and sixth causes of action against them, and Defendant Boyle seeks to dismiss Plaintiff's first, fifth, and sixth causes of action against him.[2] The Court will address the merits of Defendants' motion below.

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[2] Though Defendants essentially make very similar arguments in each of their motions, Morin also makes the separate argument that Plaintiff's complaint was served upon him more than 120 days after the filing of the complaint and that as such, Plaintiff's complaint must be dismissed in its entirety against him pursuant to Fed. R. Civ. P. 4(m). The Court, however, finds that Morin only makes an explicit argument regarding late service in his reply brief, see Morin's Reply at 6, and that as such, this argument has been waived.

Federal Rule of Civil Procedure 12(b)(6) provides for dismissal when a complaint fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A complaint fails to state a claim "only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." Swierkiewicz v. Sorema N.A., -U.S.-, 122 S.Ct. 992, 997 (Feb. 26, 2002) (citation omitted). In reviewing a Rule 12(b)(6) motion, the court presumes the truth the factual allegations in the complaint, and draws all reasonable inferences in favor of the non-moving party. See Parks Sch. of Bus., Inc. v. Symington, 51 F.3d 1480, 1484 (9th Cir. 1995). Though courts need not accept the truth of conclusory allegations, Nat'l Assoc. for the Advancement of Psychoanalysis v. Calif. Bd. of Psych., 228 F.3d 1043, 1049 (9th Cir. 2000), such allegations are sufficient to state a claim if they "give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." Swierkiwicz, -U.S. -, 122 S. Ct. at 997 (citations omitted). The issue is not whether the plaintiff will ultimately prevail, but whether the plaintiff is entitled to offer evidence to support the plaintiff's claim. See Usher v. City of Los Angeles, 828 F.2d 556, 561 (9th Cir. 1987).

Plaintiff's first cause of action alleges the violation of California Civil Code § 49(a) against Morin, Delaplane, and Boyle. Defendants seek to dismiss Plaintiff's claim pursuant to Fed. R. Civ. P. 12(b) (6). Section 49(a) forbids the abduction or enticement of a child from a parent, or from a guardian entitled to its custody. Cal. Civ. Code § 49(a). Though case law on the matter is surprisingly sparse, it has been stated that the purpose of the section is to "deter child-stealing by feuding parents and similar antisocial conduct" and more specifically to allow parents to collect damages from a person "who by force abducts a child from its home or who, with knowledge that the parents have not consented,

induces the child to leave home, or who, with knowledge that the child is away from home against the will of the parents, imprisons the child or induces it not to return home." Surina et al. v. Lucey, 168 Cal. App. 3d 539, 543 (Cal. Ct. App. 1985). The Court agrees with Defendants Morin, Delaplane, and Boyle that Plaintiff has not pointed to any cases applying the provision to situations where persons have allegedly engaged in misconduct as part of a child custody proceeding whereby the children were ultimately removed form the custody of one parent and given to another nor has the Court found any such case law on its own. The Court concludes that Plaintiff cannot meet the elements of Section 49(a) violation because no "child-stealing," abduction of, imprisonment of, or inducement of a child to leave home is presented by Plaintiff's First Amended Complaint. Thus, the Court finds that she has failed to state a claim for relief under California Civil Code § 49 (a) against either Morin, Delaplane, or Boyle and as such, their motions to dismiss Plaintiff's first cause of action are GRANTED.

Plaintiff's fourth cause of action alleges violations of California Penal Code § 11172 (false claims of child abuse and neglect) against Morin and Delaplane. Plaintiff concedes that she cannot obtain damages for any false reporting against Morin that occurred prior to October 3, 2000, which is one year from the date that Plaintiff filed her original complaint, Pl's Opposition to Morin's Motion at 17, and that she cannot obtain damages for any false reporting against Delaplane that occurred prior to February 11, 2001, which is one year from the date of Plaintiff's filing of the First Amended Complaint which added Delaplane as a defendant in the instant action. Pl's Opposition to Delaplane's Motion at 18. Aside from this limitation to Plaintiff's fourth claim, the Court finds that contrary to Morin and Delaplane's protestations, Plaintiff's allegations that their false reports to social workers and the

Department of Children and Family Services that she had "allowed the children to for unattended into a fast-flowing, deep creek" Pl's First Amended Complaint ¶¶ 107-08, constitute reports of "neglect" for purposes of California Penal Code Section 11165.2 which defines "neglect" as "the negligent treatment or the maltreatment of a child by a person responsible for the child's welfare under circumstances indicating harm or threatened harm to the child's health or welfare." Cal. Pen. Code 11165.2. Moreover, the Court is not persuaded by Defendants' argument that California's "Anti-SLAPP" statute, Cal. Civ. Proc. Code § 425.16[3], bars Plaintiff's fourth cause of action because it would appear to the Court that to hold otherwise would be to eviscerate the purpose and function of California Penal Code Section 11172's ban against false reporting of child abuse or neglect by persons other than "mandated reporters."[4] In short, the Court finds that neither defendant has sufficiently convinced the Court that the opposite conclusion is compelled.[5]

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[3] Section 425.16 provides that "[a] cause of action against a person arising from any act of that person in furtherance of the person's right or petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim. Cal. Civ. Proc. Code § 425.16.

[4] These individuals are child care custodians, health practitioners, firefighters, clergy members, animal control officers, humane society officers, employees of a child protective agency, child visitation monitors, or commercial film and photographic print processors who report a known or suspected instance of child abuse. Cal. Penal Code § 1172(a).

[5] Though Plaintiff requests attorney's fees under Section 425.16 which provides that a court shall award costs and reasonable

Defendants Morin and Delaplane's motions to dismiss Plaintiff's fourth cause of action in its entirety are DENIED.

Plaintiff's fifth and sixth causes of action against Morin, Delaplane, and Boyle allege Section 1983 violations stemming from their "conspiracy" to deprive Plaintiff of her liberty interest in the continued custody of her children, of her due process rights, and of her equal protection rights. Pl's First Amended Complaint ¶¶ 112-17. The court agrees with Plaintiff that though Morin, Delaplane, and Boyle are private parties, her allegations satisfy the state action requirement of Section 1983 because they appear to accuse Morin, Delaplane, and Boyle of operating as willful participants in joint activity with the state or its agents (here, Wellman and Dallis as social workers employed with the County of Los Angeles). See Lugar v. Edmonson Oil Co., Inc., 457 U.S. 922, 939 (1982) (discussing the "joint action" test and how a "close nexus" between the state and the challenged action can transform seemingly private behavior as behavior of the state itself); see also Brentwood Academy v. Tennessee Secondary School Athletic Ass'n, 531 U.S. 288, 121 S. Ct. 924, 929, 930 (2001) (same). However, to prove conspiracy between these private defendants and the social services employees under Section 1983, an agreement or meeting of the minds to violate Plaintiff's constitutional rights must be shown. Woodrum v. Woodward County, Oklahoma, 866 F.2d 1121, 1126 (9th Cir. 1989). Plaintiff's conclusory allegations that Morin, Delaplane, Boyle, and the social workers conspired do not support claims for violation of her constitutional rights under Section 1983. Id. Therefore, Morin, Delaplane, and

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attorney's fees to a plaintiff prevailing on a motion if it finds that the motion to strike was frivolous or solely intended to cause unnecessary delay, this Court declines to make such findings.

Boyle's motions to dismiss Plaintiff's fifth and sixth causes of action are GRANTED.

Based on the foregoing, the Court GRANTS Boyle's motion to dismiss. Defendant Boyle is hereby dismissed from the action. The Court GRANTS in part and DENIES in part Defendants Morin and Delaplane's motions to dismiss in that Plaintiff's fourth cause of action against each of them remains, Plaintiff's first, fifth, and sixth causes of action against each of them are hereby dismissed.

Deputy Clerk S/S

APPENDIX G

California Government Code Section 820.21

§ *820.21 Gov't* (a) Notwithstanding any other provision of the law, the civil immunity of juvenile court social workers, child protection workers, and other public employees authorized to initiate or conduct investigations or proceedings pursuant to Chapter 2 (commencing with Section 200 Welf. & Inst.) of Part 1 of Division 2 of the Welfare and Institutions Code shall not extend to any of the following, if committed with malice: (1) Perjury. (2) Fabrication of evidence. (3) Failure to disclose known exculpatory evidence. (4) Obtaining testimony by duress, as defined in Section 1569 Civ. of the Civil Code, fraud, as defined in either Section 1572 Civ. or Section 1573 Civ. of the Civil Code, or undue influence, as defined in Section 1575 Civ. of the Civil Code. (b) As used in this section, "malice" means conduct that is intended by the person described in subdivision (a) to cause injury to the plaintiff or despicable conduct that is carried on by the person described in subdivision (a) with a willful and conscious disregard of the rights or safety of others. (Added by Stats. 1995, c. 977, §§ 1.)